

**HB 455 Michele Reinhart Amendments**  
**March 10, 2009**

This handout explains the most significant changes proposed in HB 455. The majority of the amendments concern changing the internal references in the bill.

**Section 2. Findings:**

- Removes one legislative finding on fish and wildlife. (Amendments 4 and 5)

**Section 3. Definitions:**

- **Removes a short phrase** ("unless a different meaning clearly appears from the context") that was included in the introduction to definitions. (Amendment 8)
- **Changes the definition of "Big Sky River"** on the Missouri and Yellowstone Rivers by inserting "boundary" before "line" to clarify the county "boundary line" on these two Big Sky Rivers. (Amendments 9 and 10)

**Section 5. Requirements for setbacks and vegetative buffers:**

- **Creates a firm distance for streamside management areas and vegetated buffers** on all Big Sky Rivers by removing the phrase "at least" before all distances set in the bill. This adds certainty for both property owners and local governments. (Amendments 14, 15, and 16)

**Section 6. Uses within streamside management area – authorization:**

- Creates a category of activities that are allowed within the streamside management area but that a local government should review to ensure it meets the intent of the law (Amendments 19 through 22). The following items are in this category:
  - Replacement of wastewater disposal facilities. This ensures that wastewater disposal facilities are grandfathered in and can be replaced as needed.
  - Buildings damaged by accidental causes other than floods.
  - For buildings damaged by flooding, a review process that allows local governments to relocate homes that are in harms way from flooding [pursuant to Section 9].
  - New agricultural buildings that are serviced by electricity, water, and onsite wastewater disposal facilities and that could be used as a permanent residence.
- Creates a category of activities that are allowed within the streamside management area but are not allowed to be reviewed by the local governments to ensure compliance (no permit will ever be needed). These items were listed as exemptions before. (Amendment 22)
- **Rewrites the "agricultural use" exemption.** The "agricultural use" exemption is rewritten to include "agricultural practices" and agricultural "infrastructure needed for agricultural operations." (Amendment 24)
- **Allows Trails in Streamside Management Areas.** Adds "trails" to the list of activities allowed in the streamside management area. (Amendment 25)

**Section 7. Political subdivision administration -- requirements -- fees:**

- **Removes Subdivision Law Reference.** Removes reference to subdivision regulations implementing the Big Sky Rivers Act because all new houses need to be included, not just new houses in new subdivisions. (Amendment 28)
- **Allows More Time for Appeals.** Allows applicants to have 60 days (instead of 30 days) to appeal a decision by the local government under the act. (Amendments 29 and 31)
- **Fees Must be Reasonable.** Modifies the fees allowed to be charged to “reasonably” cover costs to local governments. Additionally, the local government can waive fees, as well as have a sliding fee scale depending on the project. (Amendments 33, 34 and 35)

**Section 8. Variances:**

- **Moves the Automatic Variance** for Parcels with No Building Site and puts them in the Next Section. (Amendment 38)

**NEW SECTION. Section 9 Adjustment of streamside management area to provide for economically viable use:**

- **Creates a New Section to Manage Streamside Management Area Adjustments Outside the Variance Process.** This section grants an adjustment in the streamside management area automatically if “an otherwise developable parcel in existence on [the effective date of this act]” entirely precludes construction of structures. This section was largely moved from Section 8, which deals with variances. (Amendment 29)

**Section 9. Local streamside management area standards authorized – minimum requirements:**

- Allows adjustments to the streamside management area described under New Section 9 above (Amendment 40).
- **Removes Subdivision Law Reference.** Removes reference to subdivision regulations implementing the Big Sky Rivers Act because all new houses need to be included, not just new houses in new subdivisions. (Amendment 41)
- **Exemptions are Always Exempt.** Ensures that the items described in Section 6 (above) are always authorized/exempt from the act. (Amendments 42 and 43)

**NEW SECTION. Section 11. Private property rights within streamside management areas:**

- Creates a New Section ensuring that the Big Sky Rivers Act does not “grant or imply granting public access to private property or to property above the ordinary high-water mark.” (Amendment 46)

**Section 10. Enforcement – penalties:**

- Removes the criminal penalty and change this to a civil penalty. (Amendment 51)

GRAY BILL with PROPOSED March 10, 2009 AMENDMENTS  
HOUSE BILL NO. 455  
INTRODUCED BY M. REINHART

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE BIG SKY RIVERS ACT; AUTHORIZING STREAMSIDE MANAGEMENT AREAS AND VEGETATED BUFFERS; REQUIRING CERTAIN POLITICAL SUBDIVISIONS TO ESTABLISH STREAMSIDE MANAGEMENT AREA PERMITTING OR CERTIFICATION PROGRAMS; PROVIDING EXCEPTIONS; PROHIBITING CERTAIN ACTIVITIES WITHIN STREAMSIDE MANAGEMENT AREAS; AUTHORIZING POLITICAL SUBDIVISIONS TO ISSUE VARIANCES, MAKE ADJUSTMENTS, COLLECT FEES, AND ADOPT LOCAL REGULATIONS THAT MEET CERTAIN REQUIREMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Short title.** [Sections 1 through 10-12] may be cited as the "Big Sky Rivers Act".

**NEW SECTION. Section 2. Intent, findings, and policy.**

(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Big Sky Rivers Act. It is the legislature's intent that the requirements of [sections 1 through 10-12] provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds that:

(a) increasing development along Montana's rivers and streams is causing unnatural rates of soil erosion, diminished water quality, unnecessary damage to protective vegetation, reduced habitat for fish and wildlife, and increased risk of flooding and property loss to downstream landowners;

(b) many adverse impacts caused by development along Montana's rivers and streams transcend the jurisdictional boundaries of local government;

(c) the state has a duty and legitimate interest in protecting the integrity of its rivers and streams on behalf of all its citizens;

(d) the state has a duty and legitimate interest in protecting people and private property by reducing property loss from flooding and erosion;

(e) conservation and protection of rivers and streams is crucial to the quality and quantity of water that is available to Montanans for domestic, agricultural, industrial, and recreational use; and

(f) fish and wildlife that rely on rivers, streams, and streamside habitats are held in trust for the benefit of all Montanans; and

(g) through careful management of the lands adjacent to rivers and streams, property owners and the state can achieve their goals without sacrificing water quality or fish and wildlife habitat or without impairing the beneficial uses of the water.

(3) The legislature recognizes that:

(a) Montana's rivers and streams provide important natural resources that belong to the people of the state and that benefit the economy, the environment, and the quality of life that Montanans enjoy;

- (b) development along the state's rivers often differs between local government jurisdictions and between regions of the state;
- (c) development in one jurisdiction on the same river can reduce the natural and economic values of the river in another jurisdiction; and
- (d) many of the state's rivers are cherished in their natural state by all Montanans.

- ⑥ (4) It is the intent of [sections 1 through 10-12] to:
- (a) enact a system of streamside protections on 10 big sky rivers, as defined in [section 3], that have widespread cultural, economic, and recreational value to all Montanans;
  - (b) ensure that development along the state's most valuable and cherished rivers and streams proceeds in a way that:

- (i) protects property from flooding and erosion;
- (ii) protects water quality and availability;
- (iii) provides opportunities for recreation;
- (iv) protects valuable water recharge areas;
- (v) preserves fish and wildlife habitat; and
- (vi) preserves the use and enjoyment of private property; and

- ⑦ (c) provides political subdivisions with a flexible system through which the provisions of [sections 1 through 10-12] may be implemented in a manner best suited to the needs of the citizens of each county along any river or stream within that political subdivision's jurisdiction.

⑧ **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10-12], ~~unless a different meaning clearly appears from the context,~~ the following definitions apply:

(1) "Channel migration zone" means the area where it is reasonably foreseeable that an active channel of a river or stream could migrate in the next 100 years because of erosion or avulsion.

(2) (a) "Big sky river" includes, as defined by the United States geological survey unless a smaller reach is specified in this subsection (2), the mainstem of the river from its point of origin to the point where the river connects to another river, below which its name changes, or where the river leaves the state for the:

- (i) Bitterroot River;
- (ii) Blackfoot River;
- (iii) Clark Fork River;
- (iv) Flathead River;
- (v) Gallatin River;
- (vi) Jefferson River;
- (vii) Madison River;
- (viii) Missouri River from its headwaters near Three Forks to the boundary line between Cascade and Choteau Counties;
- (ix) Smith River; and
- (x) Yellowstone River from the Montana-Wyoming border to the boundary line between Treasure and Rosebud Counties.

⑨ (b) The term does not include any lake or reservoir along a river or any upstream fork or tributary of a river.

⑩ (3) "Flood plain" has the meaning provided in 76-5-103.

(4) "Flood-prone area" means the area adjacent to a river or stream that is predicted to be covered by the floodwater of a flood of 100-year frequency based on:

(a) an analysis of elevation, without taking into account channel restrictions such as bridge abutments and obstructions; and

(b) if appropriate, aerial photographs of past floods.

(5) "Ordinary high-water mark" has the meaning provided in 23-2-301.

(6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(7) "Political subdivision" means any incorporated city or town, a consolidated city-county government, or a county.

(8) "Streamside management area" means an area of varying width adjacent to a river or stream where certain uses have the potential to significantly affect private property, wildlife habitat, water quality, fish, or other aquatic resources. Streamside management areas may not be smaller than the vegetated buffer.

(9) "Vegetated buffer" means the portion of the streamside management area that is closest to the river or stream where all natural vegetation, rocks, soil, and topography should be maintained in their original state to the maximum extent possible or enhanced or restored by the planting of native vegetation. Within the vegetated buffer, weed control and removal of some vegetation reasonably required to protect personal property from the threat of wildfire or to remove a threat to public or personal safety is allowed.

**NEW SECTION. Section 4. Streamside management area regulations -- jurisdiction.**

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(1) Except as provided in [section 9 10], the provisions of [sections 5 through 7] pertaining to a big sky river do not apply to:

(a) incorporated cities and towns;

(b) unincorporated entities established prior to [the effective date of this act] that are classified as census-designated places by the United States bureau of the census and that are:

(i) within the boundary of a sanitary sewer district created pursuant to Title 7, chapter 13, part 1, 22, 23, 30, or 43; or

(ii) served by a sanitary sewer district under subsection (1)(b)(i);

(c) zoned areas with regulations established before [the effective date of this act] that have residential densities of at least 1 unit per acre and are served by municipal sewer and water systems; or

(d) or a big sky river regulated by a local streamside management area regulation adopted prior to [the effective date of this act] that prohibits all new building construction within at least 150 feet of the river.

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(2) Changes after [the effective date of this act] to any local streamside management area regulations for a big sky river that were adopted prior to [the effective date of this act] must comply with [sections 1 through 10 12].

**NEW SECTION. Section 5. Requirements for streamside management areas and vegetated buffers.**

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(1) Except as provided in [section 9 10] and subsection (2) of this section, along either side of a big sky river, there must be a streamside management area of at least 250 feet, as measured from the ordinary high-water mark, that must include a vegetated buffer of at least 150 feet.

(16) (2) When a slope adjacent to a big sky river rises at a grade of 50% or greater for at least 20 feet above the ordinary high-water mark and no historic evidence of bank erosion exists, the streamside management area required for that big sky river is at least 150 feet, with a vegetated buffer of at least 100 feet.

NEW SECTION. **Section 6. Uses within streamside management area -- authorization.**

(17) (1) Except as provided in [section 8 sections 8 and 9], the following uses are prohibited within a streamside management area established pursuant to [section 5 or 9, 10]:

- (18) (a) any type of new building, including new residential, commercial, or industrial structures, or outbuildings such as a garage or shop;  
(b) the installation of a manufactured or prefabricated building;  
(c) new onsite wastewater disposal facilities;  
(d) an addition to an existing building of more than 50% of the square footage of the existing structure; or  
(e) the construction of a new parking lot or road except when necessary to cross a river or stream.

(19) (2) The following uses are authorized in a streamside management area but are subject to review under [sections 1 through 12] by the political subdivision that established the streamside management area:

(a) the lawful use of land or buildings that existed on or before [the effective date of this act], including:

(20) (i) the reconstruction, replacement, or repair of an existing onsite wastewater disposal facility if the updated facility is no closer to the river or stream than the original onsite wastewater disposal facility; and

(21) (ii) the reconstruction or repair of any building destroyed or damaged by accidental causes other than flooding if:

(22) (A) the original perimeter of the building is not exceeded; and

(B) the reconstruction or repair is commenced within 2 years of the date of destruction;

(iii) the reconstruction, replacement or repair of any building destroyed or damaged by flooding, except that relocation pursuant to [section 9] may be required by the political subdivision that established the streamside management area, and

(b) new agricultural buildings that are serviced by electricity, water, and onsite wastewater disposal facilities and that could be used as a permanent residence

(23) (3) The following uses are authorized in a streamside management area, and are exempted from review under [sections 1 through 10]: (RENUMBER SUBSEQUENT SUBSECTIONS)

(24) (b a) any use conducted on property pursuant to a hydroelectric project license issued by the federal energy regulatory commission or located within the licensed project boundary as determined by the federal energy regulatory commission;

(c b) with the exception of subsection (2)(b), agricultural uses, including existing agricultural practices and infrastructure needed for agricultural operations, except any use that includes a new building that is serviced by electricity, water, and onsite wastewater disposal facilities and that could be used as a permanent residence.

(d c) structures and equipment used to collect and transport water from a river or stream for agricultural or industrial uses, including diversion and intake structures, pipes, pumps, pumphouses, and related equipment;

(25) (e d) structures and infrastructure pertaining to water-related recreation, including but not limited to trails, docks, boat ramps, and fishing access sites;

(f e) filling for highway, street, and railroad embankments not associated with a river or stream crossing if:

(i) reasonable alternative transportation routes outside the streamside management area are not available; and

(ii) any encroachment is located as far from the river or stream channel as possible;

(g f) repair and improvement of existing roads within the streamside management area; and

(h) commercial forest practices subject to the provisions of Title 77, chapter 5, part 3.

#### NEW SECTION. Section 7. Political subdivision administration -- requirements -- fees.

(26) (1) Subject to subsection (4), any political subdivision establishing a streamside management area pursuant to [section 5 or 9-10] shall implement a permit or certification program for new construction proposed within that streamside management area to ensure that the requirements of [sections 1 through 10-12] are met.

(27) (2) The permit or certification program:

(28) (a) may be outlined in a separate ordinance or as part of a local subdivision, zoning, sanitation, flood plain, or other local development regulation;

(29) (b) must allow an applicant to appeal a permit or certification decision to the governing body of the political subdivision within 30 60 days of the issuance of the decision, with an opportunity for a hearing on the appeal; and

(30) (c) must allow an applicant to appeal decision by the governing body within 30 60 days after the decision of the governing body; and

(31) (d) may include standards that exceed those established in [sections 5 and 6].

(32) (3) A political subdivision may charge a reasonable fee to cover commensurate with the costs of implementing the requirements of [sections 1 through 10-12]. The political subdivision may establish a procedure for reducing or waiving the fee.

(33) (4) A county or consolidated city-county government establishing a streamside management area for a big sky river within its boundaries shall implement a permit or certification program by January 1, 2011.

#### NEW SECTION. Section 8. Variances.

(34) (1) A political subdivision shall adopt variance procedures that address the criteria established in subsection (3) for granting variances for uses that would not otherwise be allowed pursuant to [section 6].

(35) (2) An application for a variance must include information that the political subdivision considers necessary to evaluate the variance request, including but not limited to plans, maps, and specifications detailing the request. A delineation of the flood plain boundary for the parcel may be required.

(3) A political subdivision may grant a variance upon finding that:

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(a) literal application of [sections 1 through 40-12] would result in an unnecessary hardship to the property owner as a result of circumstances unique to the parcel, including but not limited to size, shape, topography, or location;

(b) the hardship referred to in subsection (3)(a) is not the result of the actions of the applicant;

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(c) the variance is consistent with the general purpose and intent of [sections 1 through 40-12] and the variance is not likely to:

- (i) adversely impact water quality;
- (ii) increase river or streambank erosion; or
- (iii) increase flood heights or velocity; and

(d) the variance is as small as reasonably possible to accommodate the proposed use while preserving the intent of [section 2] to the greatest degree practicable.

(4) The applicant for a variance has the burden of demonstrating that the variance request meets the criteria established in subsection (3).

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(5) If the provisions of [sections 1 through 10] preclude the construction of structures on an otherwise developable parcel in existence on [the effective date of this act], the political subdivision shall:

(a) find that an unnecessary hardship exists under subsection (3)(a); and

(b) upon the applicant's compliance with subsection (2), issue a variance in conformance with subsection(3)(d).

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**NEW SECTION. Section 9. Adjustment of streamside management area for economically viable use.** (1) A political subdivision establishing a streamside management area pursuant to [sections 5 or 10] shall allow for adjustment of the streamside management area on an individual parcel without requiring the receipt of a variance by the owner when the:

(a) application of the streamside management area to an existing tract of record would not provide for economically viable use of the parcel; or

(b) construction of a new building is precluded on an otherwise developable parcel in existence on [the effective date of this act].

(2) Any adjustment of the streamside management area must be limited to the least extent possible to provide for economically viable use of the parcel while preserving the intent of [section 2] to the greatest extent possible.

**NEW SECTION. Section 9-10. Local streamside management area standards authorized – minimum requirements.**

(1) A political subdivision may enact local streamside management area regulations defining the streamside management area and vegetated buffer for any river or stream within its jurisdiction, as long as the political subdivision complies with the provisions of [section 7] and provides for variances pursuant to [section 8] and adjustments pursuant to [section 9].

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(2) Local streamside management area regulations may be adopted in lieu of the provisions of [section 5] for a big sky river if they meet the minimum requirements of this section.

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(3) Local streamside management area regulations must:

(a) be adopted as a separate ordinance or as part of a local subdivision, zoning, sanitation, flood plain, or other local development regulation;



(b) establish vegetated buffers that, based on peer-reviewed scientific studies and local conditions, are wide enough to generally prevent unnatural rates of erosion and sedimentation, protect water quality, maintain native riparian vegetation, and protect other natural resources for the purposes expressed in [section 2(4)(b)]; and

(c) define terms.

(4) Local streamside management area regulations established under this section:

(a) may exempt those entities listed in [section 4(1)];

(b) may include standards that exceed those established in [section 6 (1)];

(c) must authorize the uses listed in [section 6 (2)], and

(d) must exempt the uses listed in [section 6 (3)].

(5) Subject to subsection (6), locally established streamside management areas and vegetated buffers may be of a fixed or variable width and may be larger or smaller than those required in [section 5]. Streamside management areas and vegetated buffers may be expressed as a numerical distance in feet or by narrative reference to topography or other physical features as long as the description establishes a definable streamside management area and vegetated buffer.

(6) Streamside management areas must be established at a sufficient width, based on peer-reviewed scientific studies and local information, to fulfill the purposes set forth in [section 2] by designating an area along the river or stream where the uses prohibited in [section 6] will not occur. The streamside management area should generally encompass the areas described in subsections (6)(a) through (6)(d). Streamside management areas need not be set at a width that encompasses the entirety of the areas described in subsections (6)(a) through (6)(d) at every point along the river or stream, as long as the width is reasonably calculated to encompass the following areas:

(a) wetlands adjacent to the river or stream;

(b) flood-prone areas;

(c) areas adjacent to the river or stream with slopes greater than 25%; and

(d) for a river, the channel migration zone.

(7) The political subdivision shall prepare a written record in support of its decision to enact a local streamside management area regulation, including references to the peer-reviewed scientific studies and local information that were used to determine the width of the streamside management area and vegetated buffer.

(8) Nothing in [sections 1 through 10-12] may be construed to limit a political subdivision's authority to enact regulations further limiting uses within streamside management areas or vegetated buffers or to enact regulations establishing streamside management areas and vegetated buffers for watercourses not governed by the provisions of [sections 1 through 10-12].

**NEW SECTION. Section 11. Private property rights within streamside management areas.** The establishment of a streamside management areas pursuant to [sections 5 or 10] may not be construed to grant or imply public access to private property or to property above the ordinary high-water mark.

**NEW SECTION. Section 10-12. Enforcement -- penalties.**

(1) In addition to other remedies, the proper authorities of the political subdivision may institute any appropriate action or proceeding to ensure that a person who commences a use prohibited

(47) for a streamside management area established pursuant to [section 5 or 9-10] restores the streamside management area and vegetated buffer to the conditions in existence before the prohibited use occurred.

(48) (2) The political subdivision may appoint enforcing officers to supervise and enforce the provisions of [sections 1 through 10-12].

(49) (3) A knowing violation of [sections 1 through 10-12] or any regulation adopted pursuant to  
(50) [sections 1 through 10-12] is a misdemeanor punishable by a fine civil penalty not to exceed  
(51) \$500 a day for each violation. Each day that a violation continues or occurs constitutes a separate violation.

NEW SECTION. **Section 11-13. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

(52) NEW SECTION. **Section 12-14. Codification instruction.** [Sections 1 through 10-12] are  
(53) intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 10-12].

NEW SECTION. **Section 13-15. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 14-16. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 15-17. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 16-18. Applicability.** [This act] applies only to construction projects or activities along a big sky river for which a completed application for a permit is filed after [the effective date of this act].

Amendments to House Bill No. 455  
1st Reading Copy

Requested by Representative Michele Reinhart

For the House Local Government Committee

Prepared by Hope Stockwell  
March 10, 2009 (8:30am)

1. Title, page 1, line 8.  
**Following:** "ISSUE VARIANCES,"  
**Insert:** "MAKE ADJUSTMENTS,"
2. Page 1, line 15.  
**Strike:** "10"  
**Insert:** "12"
3. Page 1, line 20.  
**Strike:** "10"  
**Insert:** "12"
4. Page 2, line 4.  
**Following:** ";"  
**Insert:** "and"
5. Page 2, line 5 through line 6.  
**Strike:** subsection (f) in its entirety  
**Renumber:** subsequent subsections
6. Page 2, line 18.  
**Strike:** "10"  
**Insert:** "12"
7. Page 2, line 30.  
**Strike:** "10"  
**Insert:** "12"
8. Page 3, line 3 through line 4.  
**Strike:** "10"  
**Insert:** "12"  
**Strike:** "unless" on line 3 through "context," on line 4
9. Page 3, line 17.  
**Following:** "to the"  
**Insert:** "boundary"
10. Page 3, line 20.  
**Following:** "to the"  
**Insert:** "boundary"

11. Page 4, line 15.

**Strike:** "9"

**Insert:** "10"

12. Page 4, line 28.

**Strike:** "10"

**Insert:** "12"

13. Page 5, line 1.

**Strike:** "9"

**Insert:** "10"

14. Page 5, line 2.

**Strike:** "at least"

15. Page 5, line 3.

**Strike:** "at least"

16. Page 5, line 6.

**Strike:** the first and second "at least"

17. Page 5, line 9.

**Strike:** "[section 8]"

**Insert:** "[sections 8 and 9]"

18. Page 5, line 10.

**Strike:** "9"

**Insert:** "10"

19. Page 5, line 18.

**Following:** "area"

**Insert:** "but are subject to review under [sections 1 through 12]  
by the political subdivision that established the streamside  
management area"

20. Page 5, line 21.

**Strike:** "and"

21. Page 5, line 23 through line 24.

**Strike:** ":"

(A)" on line 23 through line 24

22. Page 5, line 25.

**Strike:** subsection (B) in its entirety

**Insert:** "(iii) the reconstruction, replacement, or repair of any  
building destroyed or damaged by flooding, except that  
relocation pursuant to [section 9] may be required by the  
political subdivision that established the streamside  
management area; and

(b) new agricultural buildings that are serviced by electricity, water, and onsite wastewater disposal facilities and that could be used as a permanent residence.

(3) The following uses are authorized in a streamside management area and are exempt from review under [sections 1 through 12] by the political subdivision that established the streamside management area:"

23. Page 5, line 26.

**Strike:** "(b)"

**Insert:** "(a)"

**ReNUMBER:** subsequent subsections

24. Page 5, line 29 through line 30.

**Following:** "(c)"

**Insert:** "with the exception of subsection (2)(b),"

**Strike:** "except" on line 29 through "residence" on line 30

**Insert:** "including existing agricultural practices and infrastructure needed for agricultural operations"

25. Page 6, line 3.

**Following:** "limited to"

**Insert:** "trails,"

26. Page 6, line 15.

**Strike:** "9"

**Insert:** "10"

27. Page 6, line 16.

**Strike:** "10"

**Insert:** "12"

28. Page 6, line 18.

**Strike:** "local subdivision,"

29. Page 6, line 21.

**Strike:** "30"

**Insert:** "60"

30. Page 6, line 21.

**Following:** "appeal;"

**Insert:** "and"

31. Page 6, line 22.

**Strike:** "30"

**Insert:** "60"

32. Page 6, line 23 through line 24.

**Strike:** "; and" on line 23 through "[sections 5 and 6]" on line

24

33. Page 6, line 25.

**Following:** "charge a"

**Insert:** "reasonable"

**Strike:** "to cover"

**Insert:** "commensurate with"

34. Page 6, line 26.

**Strike:** "10"

**Insert:** "12"

35. Page 6, line 26.

**Following:** "."

**Insert:** "The political subdivision may establish a procedure for reducing or waiving the fee."

36. Page 7, line 7.

**Strike:** "10"

**Insert:** "12"

37. Page 7, line 11.

**Strike:** "10"

**Insert:** "12"

38. Page 7, line 20 through line 24.

**Strike:** subsection (5) in its entirety

39. Page 7, line 25.

**Following:** line 24

**Insert:** "NEW SECTION. Section 9. Adjustment of streamside management area for economically viable use. (1) A political subdivision establishing a streamside management area pursuant to [section 5 or 10] shall allow for adjustment of the streamside management area on an individual parcel without requiring the receipt of a variance by the owner when the:

(a) application of the streamside management area to an existing tract of record would not provide for economically viable use of the parcel; or

(b) construction of a new building is precluded on an otherwise developable parcel in existence on [the effective date of this act].

(2) Any adjustment of the streamside management area must be limited to the least extent possible to provide for economically viable use of the parcel while preserving the intent of [section 2] to the greatest extent possible."

**Renumber:** subsequent sections

40. Page 7, line 30.

**Following:** "[section 8]"

**Insert:** "and adjustments pursuant to [section 9]"

41. Page 8, line 4.

**Strike:** "local subdivision,"

42. Page 8, line 11.

**Following:** "section"

**Insert:** ":"

(a) "

43. Page 8, line 12.

**Following:** "4(1)]"

**Insert:** ";

(b) may include standards that exceed those provided in [section 6(1)];

(c) must authorize the uses listed in [section 6(2)]; and

(d) must exempt the uses listed in [section 6(3)]"

44. Page 9, line 2.

**Strike:** "10"

**Insert:** "12"

45. Page 9, line 5.

**Strike:** "10"

**Insert:** "12"

46. Page 9, line 6.

**Following:** line 5

**Insert:** "NEW SECTION. Section 11. Private property rights within streamside management areas. The establishment of a streamside management area pursuant to [section 5 or 10] may not be construed to grant or imply public access to private property or to property above the ordinary high-water mark."

**Renumber:** subsequent sections

47. Page 9, line 9.

**Strike:** "9"

**Insert:** "10"

48. Page 9, line 13.

**Strike:** "10"

**Insert:** "12"

49. Page 9, line 14.

**Strike:** "10"

**Insert:** "12"

50. Page 9, line 15.

**Strike:** "10"

**Insert:** "12"

51. Page 9, line 15.

**Strike:** "a misdemeanor"

**Strike:** "fine"

**Insert:** "civil penalty"

**Strike:** "a day."

**Insert:** "for each violation. Each day that a violation continues  
or occurs constitutes a separate violation."

52. Page 9, line 21.

**Strike:** "10"

**Insert:** "12"

53. Page 9, line 22.

**Strike:** "10"

**Insert:** "12"

- END -